

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

**DEAN BREZACK, T/A ABN  
STUDY PARTNER,**

**Plaintiff,**

**v.**

**SHPOONKLE LLC, et al.,**

**Defendants.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Civil Action No: 5:12-CV-0007-MFU**

**MOTION TO DISMISS**

COMES NOW Defendants Alex Niznik and Alla Estrakh, appearing specially<sup>1</sup>, by counsel, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and move this Court to dismiss the claims against them for failing to state a cause of action. Plaintiff Dean Brezack fails to allege facts sufficient to support vicarious liability against Alex Niznik and Alla Estrakh for Shpoonkle LLC and Shpoonkle CLE LLC's alleged infringement of Plaintiff's copyrights. Furthermore, Plaintiff fails to allege any facts to support a claim for willful infringement. For these reasons and those more fully set forth in the accompanying memorandum, Defendants respectfully request that this Court dismiss the claims against them.

Respectfully Submitted,

**ALEX NIZNIK  
ALLA ESTRAKH**

/s/ William F. Demarest III  
Charles M. Allen (VSB # 30183)  
William F. Demarest, III (VSB # 78428)  
Matthew T. Kitces (VSB # 78696)  
Goodman, Allen & Filetti, PLLC  
4501 Highwoods Parkway, Suite 210  
Glen Allen, VA 23060

---

<sup>1</sup> See Defendants' contemporaneously filed Motion to Dismiss of Lack of Personal Jurisdiction.

(804) 346-0600 (Telephone)

(804) 346-5954 (Fax)

[wdemarest@goodmanallen.com](mailto:wdemarest@goodmanallen.com)

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of October, 2012, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send notification of such filing to the following:

Johnny Dale Dellinger  
Mainspring Law, PLLC  
3702 Lyons Lane  
Alexandria, Virginia 22302  
Telephone: (703) 362-0828  
Email: [jdellinger@mainspringlaw.com](mailto:jdellinger@mainspringlaw.com)  
*Counsel for Plaintiff*

/s/ William F. Demarest III  
William F. Demarest, III (VSB # 78428)  
Goodman, Allen & Filetti, PLLC  
4501 Highwoods Parkway, Suite 210  
Glen Allen, VA 23060  
(804) 346-0600 (Telephone)  
(804) 346-5954 (Fax)  
[wdemarest@goodmanallen.com](mailto:wdemarest@goodmanallen.com)  
*Counsel for Defendants*